S. HRG. 101-209

NOMINATION OF FRED T. GOLDBERG, JULIUS L. KATZ, AND MICHAEL J. ASTRUE

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON THE

NOMINATION OF

FRED T. GOLDBERG TO BE COMMISSIONER OF THE INTERNAL REVENUE SERVICE; JULIUS L. KATZ, TO BE DEPUTY U.S. TRADE REPRESENTATIVE; AND MICHAEL J. ASTRUE, TO BE GENERAL COUNSEL, DEPARTMENT OF HEALTH AND HUMAN SERVICES

JUNE 22, 1989

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NOMINATION OF FRED T. GOLDBERG, JULIUS L. KATZ, AND MICHAEL J. ASTRUE

THURSDAY, JUNE 22, 1989

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The committee met, pursuant to notice, at 10:06 a.m. in room SD-215, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman) presiding.

Also present: Senators Moynihan, Baucus, Boren, Bradley, Pryor, Riegle, Daschle, Packwood, Roth, Danforth, Chafee, Heinz, and Symms.

[The press release announcing the hearing follows:]

[Press Release No. H-39, June 20, 1989]

SENATOR BENTSEN ANNOUNCES HEARING AND EXECUTIVE SESSION ON IRS, USTR AND HHS NOMINATIONS

WASHINGTON, DC—Senator Lloyd Bentsen (D., Texas), Chairman, announced Wednesday that the Finance Committee will hold a hearing and executive session on nominations for the Internal Revenue Service, Department of Health and Human Services, and the Office of the United States Trade Representative.

The hearing and executive session will be held on *Thursday, June 22, 1989 at 10 a.m.* in Room SD-215 of the Dirksen Senate Office Building.

The Committee will consider the nominations of Fred T. Goldberg Jr. to be Commissioner of the Internal Revenue Service, Julius L. Katz to be a Deputy United States Trade Representative, and Michael J. Astrue to be General Counsel of the Department of Health and Human Services.

OPENING STATEMENT OF HON. LLOYD BENTSEN, A U.S. SENATOR FROM TEXAS, CHAIRMAN, SENATE FINANCE COMMITTEE

The CHAIRMAN. This hearing will come to order, if you will please take your seats.

Our first nominee to be considered this morning will be Mr. Goldberg, who has been nominated to be the Commissioner of the Internal Revenue Service.

The IRS Commissioner is charged with administering our tax laws and helping formulate tax policy. It has been a particularly challenging job over the last few years because of the enormous changes in our tax legislation. Each time we have talked about simplification, but in many instances it has not turned out to be that.

You certainly appear to have the requisite background to fill the Commissioner's shoes. You were the Chief Counsel of the Internal Revenue Service from 1984 to 1986 during tax reform. You have also practiced tax law for 12 years, and the Chair particularly likes

that. I think it is terribly important that we have people that have been out there in the private sector advising clients, dealing with their concerns, understanding the complexities of the tax system, and dealing with them.

I have listened to some of the questions, though, about the IRS being up to the task. With all of the mechanical changes taking place, the problems of administration, outmoded computer systems, high staff turnover, and relatively low salaries, you really have a job on your hands providing the leadership that is necessary.

I note that you have the distinguished senior Senator from Missouri with you. I assume he is not the candidate for the position, but is here for other purposes. I must defer first to my friend, Senator Packwood, the ranking minority member, for any comment he may have.

Senator Packwood. Mr. Chairman, I have no comments. I am going to excuse myself and go to the floor at 10:30 for the last of the debate on the child care, but I will stay until about 10:28.

The CHAIRMAN. Well, I would say to my friend, I have the same problem. I will go with you and we will let Senator Pryor preside at that point.

Senator Danforth, we are pleased to have you.

OPENING STATEMENT OF HON. JOHN C. DANFORTH, A U.S. SENATOR FROM MISSOURI

Senator DANFORTH. Mr. Chairman, thank you very much.

I am pleased to present to the committee for confirmation for Commissioner of Internal Revenue, Fred T. Goldberg, Jr.

Mr. Chairman, I have previously met Fred Goldberg. I cannot tell the committee that I know him well. However, I would note that Fred Goldberg was born in St. Louis, MO. He was raised in St. Louis. He is a graduate of St. Louis Country Day School and Yale Law School. So, Mr. Chairman, no higher accolade has ever been paid to any nominee to appear before this committee.

Mr. GOLDBERG. Thank you, Senator Danforth.

The CHAIRMAN. That is quite enough. Thank you very much. [Laughter.]

Mr. Goldberg, we will be pleased to have your testimony.

STATEMENT OF FRED T. GOLDBERG, NOMINEE FOR COMMISSIONER OF THE INTERNAL REVENUE SERVICE

Mr. GOLDBERG. Yes.

Mr. Chairman, it is a great honor to appear before you today as the President's nominee for Commissioner of Internal Revenue. I am grateful to you and to the members of your committee for holding this confirmation hearing in the midst of your busy schedule. I also wish to thank Secretary Brady for his endorsement and President Bush for nominating me.

Our system of tax administration has been and remains a national treasure and the envy of the world. At the same time, however, I believe that there are critical challenges that we must confront if we are to maintain and enhance that system.

Most notably, we must deliver on our commitment to quality, to treating the taxpayer as customer. Lip service alone will not suf-

fice. We must successfully modernize our computer systems; the day of reckoning truly is just around the corner.

We must all endeavor to simplify the system. While the 1986 Act greatly eased the compliance burden for many millions of individual taxpayers, the complexity and uncertainty facing many individuals, large and small businesses, and IRS agents alike, is truly of staggering proportions.

We must be held accountable in formulating and implementing our budget to meet our goals and objectives. It is clear that expenditures by the IRS generate substantial net revenue to the Federal Government. It is also clear that significant incremental expenditures will be required in connection with system modernization during the next several years. These facts do not relieve the IRS of the need for budget accountability. They make that need all the more compelling.

There are a number of studies addressing these and other issues. I personally believe that last year's joint IRS/GAO report, "Managing IRS," is an exceptionally fine road map for the years ahead. Words alone, however, will not take us very far. The question is whether we can deliver on quality, system modernization, simplification, financial accountability, and the like.

I am confident that these and other challenges will be addressed successfully in the years ahead. The 120,000 IRS career employees are an exceptionally dedicated, capable, and honorable group of public servants, and are led by a fine cadre of professional managers. I particularly applaud the IRS/NTEU Joint Quality Improvement Process Agreement, and I am most eager to work with all IRS employees in building a better tax system. But the IRS cannot go it alone and should not try. Any successes we have in meeting these challenges will be attributable to the ongoing efforts of you and your colleagues in the Congress, the commitment of this Administration to fair and efficient tax administration, the cooperation of many thousands of tax professionals, and above all, the American public's continued commitment to a system of voluntary compliance. We can and must work openly and cooperatively with all those who have a stake in good tax administration.

I have had the honor and privilege of serving in the public sector before as Chief Counsel of the Internal Revenue Service. I hope this committee and the Senate will look favorably on my nomination, for I could not be more eager and more enthusiastic at the prospect of serving again.

I will be pleased to answer any questions the committee may have.

[The prepared statement of Mr. Goldberg appears in the appendix.]

The CHAIRMAN. Thank you.

The Taxpayers' Bill of Rights, Senator Pryor's bill and this committee's bill, was intended to improve services to taxpayers and make the IRS more responsive to taxpayers. There is no question in my mind that the Commissioner is in a position to do a lot of things procedurally by good management practices, that are not really the responsibility of legislation.

Do you have any specific targets in mind for changing procedures and management practices?

Mr. GOLDBERG. Senator, I think that the Taxpayer Bill of Rights is essential, critically important legislation. My understanding is that the Service has set about implementing that legislation in a comprehensive and orderly fashion, but I could not agree with you more wholeheartedly. I think that the most important aspect of that legislation is the message that it sends to us as tax administrators that we are accountable for dealing fairly with the taxpayers, the citizens of this country, and I think we have to take it and believe it and deliver on it, or it just gathers dust. And I think that has to be the highest priority for the Commissioner.

The CHAIRMAN. Do you have any specifics at this point?

Mr. GOLDBERG. Senator, I am not yet Commissioner——

The CHAIRMAN. Okay.

Mr. GOLDBERG [continuing]. And am not in a position to address the details.

The CHAIRMAN. All right.

We have heard reports about a substantial increase in tax collections above anticipated amounts, particularly from individuals. I have also heard reports that collections from corporations may be less than expected.

Do you have any hard numbers, yet? What can we expect from OMB's mid-year report?

Mr. GOLDBERG. Again, Senator, I am not yet Commissioner and so I do not have access to that data. If I could offer a comment in terms of the increase in receipts, my own personal judgment is that in part that reflects enhanced compliance by individual taxpayers, and in turn I believe that that——

The CHAIRMAN. Why should compliance be enhanced? What has been done to enhance compliance?

You have conducted fewer audits than in the past. Where is the cause?

Mr. GOLDBERG. My personal belief, Senator, is reducing the maximum marginal rates as was done in 1986 was the single, best thing that could have been done to encourage voluntary compliance, and I believe that that is taking place. That is not to say we cannot do better. The decline in audit coverage is very troublesome, but I think that the overall structural changes introduced by the 1986 Act in the individual sector had an enormous positive impact on taxpayer behavior.

The CHAIRMAN. You really think that a smaller percentage of people cheat just because you reduced tax rates?

Mr. GOLDBERG. Personally, Senator, yes. That is my belief.

The CHAIRMAN. I hope you are right.

Well, do you think the tax gap is a serious problem?

Mr. GOLDBERG. Absolutely. I think if the published reports are correct that $80 billion or $100 billion or whatever the number is of revenue out there that is owed the Federal government is not being collected, it is a very serious problem, and I think that it is a principal function of the Internal Revenue Service to address those questions and to do a better job of collecting those taxes due.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. No questions, Mr. Chairman.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, will you forgive if I engage Mr. Goldberg briefly in the discussion of the building accommodations at Cadman Place in Brooklyn?

This has been going on for 10 years, as Mr. Goldberg knows. The courts need more room in the Federal Office Building. The U.S. attorney needs more room, and the room they need and the only other rooms available are those of the space available is the IRS, and it is not something which anybody can be just or even, for that matter, be wise.

But it is saving to the wisdom that there comes a time when an issue should be resolved and this has been going on for ten years, and the courts do plead with us and that makes a claim on you because the courts have nothing more than your own sense of responsibility, of the Congress and the Executive, to do what needs to be done for them. The U.S. attorney, it is even more urgent. I suppose he can always threaten to indict you, but the courts, you know, they have some claim on it.

But I was up there a year ago, and to illustrate the situation—this is Kennedy Airport, of course, a major international airport. A couple of weeks earlier a rock star had been picked up with the proscribed amount of marijuana in his possession and he had not been indicted. They had declined to indict, and the U.S. attorney was worried that there might have been some privileges shown him, and so he asked about, you know, at what amounts of this particular drug do we decline to indict, and he was told that we do not indict anybody who brings in less than one ton. Now how do you get a ton in your duffel bag, I don't know, but they do. And it is a system of law enforcement that becomes derisive. You know about this.

Can I ask you, and I am asking you because we have already had a little chat, would you personally try to get this thing resolved and in a decent spirit? The GSA will get you all the space you possibly need in Brooklyn and Queens, and there is space, but the courts and the U.S. attorney, the Department of Justice, do need some of what you now have.

Mr. GOLDBERG. Senator, nothing in life should take ten years. I share your frustration.

Senator MOYNIHAN. That is spirit of the Commissioner of the IRS. [Laughter.]

Mr. GOLDBERG. And I would like to say I will do better than try to resolve it. I think I can tell you I will attend to it and it will be resolved promptly.

Senator MOYNIHAN. You could not be kinder, sir. Thank you.

Mr. GOLDBERG. My pleasure.

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. Mr. Goldberg, the question I am going to ask you is really a philosophical question, but it is based on an idea which is a practical idea that was given to me some months ago. If you are interested in it, I will be happy to tell you where I got it.

A man came into my office and he was a very good scientist type, very, in fact, renowned, and he told me that there is a gizmo, for lack of a better word, and that this can be placed on charge card machines, the kind of thing that your charge card goes into, and that also it can be placed on cash registers, and the effect of it is to

punch some kind of a number or sign on slips that come out of cash registers or printed on the stamp that your card makes.

And the effect of this would be to make the monitoring of over-the-counter transactions just ironclad so that the IRS could go into businesses that do retail operations and could find out precisely what the sales were. And he says that from the analysis he has made, a lot of money—he said as I recall something like $40 billion—of revenue is lost because over-the-counter transactions sometimes are just not reported and the IRS never finds out about them. So he was peddling this idea of this gizmo being put on cash registers and machines.

Now my question to you is, would this be a good idea, if it is an idea? I suppose some people could say on one hand, "Well, it is too much big brotherism." I mean, it is like having the government look over your shoulder if you can have every sale monitored. Further, they might argue that $40 billion of increased revenue may be bad for the economy. Maybe it is too much to go to Uncle Sam.

On the other hand, it could be said that, you know, people owe taxes. They should pay taxes, and if there is such a mechanism that can be placed on cash registers and so on, let us get ahead with it.

Would this be a good idea or a bad idea?

Mr. GOLDBERG. Senator, I think probably the most difficult problem in enforcing the tax laws, as you suggest, is in dealing with a cash economy, no question about it. I guess I am congenitally skeptical of final solutions and ironclad approaches to anything and would wonder if the cash would not simply bypass the register and land in the pocket.

But having said that, I think it is clearly a very significant and perhaps the most difficult part of tax enforcement, and I think any ideas that we can come up with and explore to deal with that problem are well worth looking at. I would be happy to follow up on the suggestion, and we will be in contact with your office to see if we cannot explore it.

Senator DANFORTH. Okay.

The CHAIRMAN. Thank you.

Senator Pryor.

OPENING STATEMENT OF SENATOR DAVID PRYOR, A U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman.

Mr. Goldberg, we want to welcome you this morning, and I do not think anyone on this committee, or probably in this audience, envies you in the role that you are about to assume.

I would like to just state that every 2 years and 6 months, approximately, we have a hearing in this committee to confirm a new IRS Commissioner. The shelf span or the life tenure, of an IRS Commissioner is not very long within our system.

You have also stated that the Internal Revenue Service has 120,000 employees You will get to hire five, as I understand—your secretary, maybe a counsel, and two other staff people. Five of the 120,000 will be basically your responsibility to bring into the Service.

Having said that, I am trying to make the point that the bureaucracy of the IRS, or any bureaucracy, knows that after you and I have come and gone, they will still be there. It will be your tenure as the Commissioner of the Internal Revenue Service to set the tone and send the message, not only to the bureaucracy, but also to the American taxpayer, as to what kind of a relationship the tax collector and the taxpayer will ultimately have.

So you have a critical mission to perform in our system, and I know you will take that mission very seriously. You have big shoes to fill, that of Larry Gibbs. He was a very fine Commissioner. In fact, he may have been one of the most popular tax collectors that I have ever met. He was a very fair-minded individual and helped to increase the morale of the Internal Revenue Service. I think he helped to make the IRS employee out there feel very proud to be associated with the Service.

From time to time this committee, as an oversight committee of the tax collector, finds it our duty to basically rein in the powers of this huge bureaucracy. Therefore, we brought into existence something that Senator Bentsen has mentioned called the Taxpayers' Bill of Rights.

We do salute you for this task that you are about to assume. We wish you well.

I have some questions, Mr. Chairman, at the proper time, and I do not know if you wanted to continue with your questions.

The CHAIRMAN. Why don't you go right ahead. Because other members are here, I am going to forego my question.

Senator PRYOR. Yes, or if Senator Moynihan or Senator Danforth would like to precede me, I have mapped out a little of my schedule this morning to visit with this very distinguished citizen.

In the Arkansas Gazette on April 22 of this year, Mr. Goldberg, there was a letter to the editor, and I want to read you just a paragraph or two.

"You good people of Arkansas should feel very proud to have a senator like David Pryor. Your man pushed the Taxpayers' Bill of Rights. He says this bill is fast becoming known as the Tax Cheaters Subsidy Bill. All of these tax cheats cheered when your senator stood up for their rights not to pay their fair share of taxes."

I am sending you a copy of this letter. I think you have it there. If not, I will. It goes on and on.

"So folks, get your thank you notes and letters ready for your fine Senator because you are about to be hit with a tax increase, and you want to be sure to thank the man who was most responsible for it."

Well, this is from a Dallas, TX citizen, and we tried to communicate with this individual, Mr. Goldberg. We found that he is a revenue officer for the Internal Revenue Service. In no way do I want to impede the freedom of speech. In no way do I want to discourage people in our Federal system from expressing themselves.

My question to you is, is this the mentality of the Internal Revenue Service with regard to this fairly sweeping new Taxpayers' Bill of Rights?

Mr. GOLDBERG. Senator Pryor, largely due to your efforts and the efforts of others, we have the Taxpayer Bill of Rights as an enacted legislation. My personal belief and my belief as Commissioner is

that it is essential to sound tax administration. It will do nothing but further sound tax administration.

But in many respects, I think my views are of lesser importance. I believe that the Internal Revenue Service, the career employees—the bureaucracy as you refer to it—overwhelmingly believes that that law embodies, not just in its letter but in its spirit, something that we are all about as the tax enforcer, and I think that you will find throughout this organization a deep-seated, individual commitment to the principles that that law stands for.

Senator PRYOR. Thank you, Mr. Goldberg.

Mr. Chairman, my time has expired.

The CHAIRMAN. Go ahead, if you have any further questions.

Senator PRYOR. Well, I will later, but I see we have other members coming in. Thank you, sir.

The CHAIRMAN. Senator Moynihan, do you have further questions?

Senator MOYNIHAN. No.

The CHAIRMAN. Senator Baucus, Senator Bradley.

Senator BRADLEY. No questions, Mr. Chairman.

The CHAIRMAN. All right, Senator Pryor.

Senator PRYOR. Well, here I am again, Mr. Goldberg. It is you and me.

There have been several allegations of misconduct and wrongdoing. Any time you have an agency of 120,000 individuals, most of them well meaning I think and very fine citizens who have a commitment to fairness, we do find some allegations. There will be a hearing on the House side. Congressman Doug Barnard will chair these hearings I understand.

On July 8 of last year, 11 months ago, Commissioner Gibbs placed a full, fair, and complete airing of these matters. A May 29 article in Time Magazine states that the IRS has been foot dragging in this investigation of these specific allegations brought against the Service and against individuals within the Service.

I wonder if you would have any comment about the proceeding into this matter and when we might expect the result of your findings?

Mr. Goldberg, Well, Senator, again, as you know, I am not the Commissioner and therefore, have no specific information. I will say that in an organization as large as this, undoubtedly there will be individual acts of misconduct.

On the other hand, I think that our collective commitment to honest, fair, and decent administration of the tax laws is essential, and the public's confidence in our essential integrity as an institution is critical to our mission. Misconduct cannot be tolerated, and will not be tolerated in this institution.

In terms of the conduct of the proceedings, again, I do not have any specific information, but it is essential that we function as an agency through open, candid communications with the Congress and with our other constituencies. We cannot do it in isolation. We cannot do it alone, and we will not do it alone.

Senator PRYOR. Thank you, Mr. Goldberg.

Mr. Gibbs made this commitment July 8 of last year, and I am just saying I hope that you will continue in that commitment. We need to get to the bottom of this.

In recent weeks—and I will not mention names; I will not even mention the case—we have seen the Internal Revenue Service leak to the press certain confidential tax information of a highly sensitive nature. I would just like to say that, notwithstanding the case of the individual, this is an intolerable situation, and I would like any comments on the releasing of confidential information.

Mr. GOLDBERG. Senator, I have no knowledge as to whether the IRS did release such information or not. I will tell you from my prior experience that probably one of the core values in that institution, the first subject that each of us is educated on when we join that institution, is the importance of confidentiality. The public's faith in our ability to respect and honor that confidence is essential, and I think that the fastest way to lose faith with the American people is to lead them to believe them we disclose that information. We just cannot tolerate and will not tolerate it.

Senator PRYOR. Mr. Goldberg, there is a matter of Stan Welli, W-e-l-l-i, with the Internal Revenue Service.

Are you familiar with that case? It is a whistle-blower matter.

Mr. GOLDBERG. Not specifically, no, sir.

Senator PRYOR. In 1984, Mr. Welli and two of his fellow inspectors reported to the regional inspector that their boss, their overseer, the assistant regional inspector, had been taking gratuities from a businessman who was having troubles with the IRS. In exchange the assistant regional inspector supplied this particular man with confidential tax information.

The only result of this report to the regional inspector was that two of these individuals who blew the whistle on their boss were demoted, and the third was pressured to move to another city by the hierarchy of the Internal Revenue Service. In addition, these three were subject to verbal harassment and threats from some of the highest officials in the inspection division of the Internal Revenue Service.

Finally, after three whistleblowers took their case to the national office of the IRS, the assistant regional inspector received a 12-day suspension without pay. This was a very, very light punishment considering that the inspector's job is to police these very situations. A review of this matter is going to be chaired by Congressman Barnard in the House, but I am interested today in a commitment that you will put a stop to the harassment of whistle blowers within the Internal Revenue Service.

There is a definite place for the Whistle Blowers' Protection Act, which is now the law of this land. It appears to me that the spirit of this Act was certainly violated in this particular case regarding Stan Welli.

Do you have a comment?

Mr. GOLDBERG. Yes. Senator, again, I cannot comment on this——

Senator PRYOR. I understand.

Mr. GOLDBERG [continuing]. Interesting case. However, I have a very strong personal bias. I think the privates often know a hell of a lot more about fighting the wars than the generals, and I think that we have to listen to our people in the field who are doing the work day to day. That is where we deliver. They are the folks who are most likely to pick up on what needs to be done. If we cannot

protect those people, if they cannot feel free to communicate their perceptions of what we are doing wrong and what we are doing right, we will lose touch with the system. I could not agree with more wholeheartedly on that subject.

Senator PRYOR. One final comment on the Welli case. After blowing the whistle on his superior and being either demoted or transferred, Welli has now received an official reprimand against him. I think the Service can do better.

Mr. GOLDBERG. Thank you, Senator.

Senator PRYOR. Thank you, Mr. Goldberg.

I am through for the moment.

The CHAIRMAN. Are there further questions of Mr. Goldberg?

[No response.]

The CHAIRMAN. Thank you very much, Mr. Goldberg.

Senator PRYOR. Mr. Chairman, are you releasing him?

The CHAIRMAN. That is what I asked.

Senator PRYOR. I was just going to allow my colleagues to go forward with questions.

The CHAIRMAN. All right, fine.

Senator PRYOR. I just have a couple more.

Senator BRADLEY. Mr. Chairman?

The CHAIRMAN. Yes, sir, Mr. Bradley.

Senator BRADLEY. If I could, I would like to say I had long discussion with Mr. Goldberg, as I am sure different members of the committee have, and my sense is that he is fully committed to do an absolutely excellent job as the Commissioner, and I know that the committee wants to work with him, and that is, I think, our general approach to your nomination.

Mr. GOLDBERG. Thank you, Senator.

The CHAIRMAN. Thank you.

Senator PRYOR. I certainly share Mr. Bradley's feeling about Mr. Goldberg.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. I will make these very quickly, Mr. Chairman.

We have a situation of incorrect penalties, Mr. Goldberg. We are all familiar with this. You and I have talked about this recently in our office, and it comes down to whether we believe the computers or whether we believe the hand-calculated penalty. Today the penalties that we assess taxpayers are based upon the computer and not the hand-calculated penalty.

We have some cases, Mr. Goldberg, of situations where the taxpayer has been assessed incorrectly and penalized too severely; yet the taxpayer, fearing what might happen if he objects, pays the higher amount.

How are we going to reconcile and get hold of this particular facet of the IRS?

Mr. GOLDBERG. Senator, I think your comment on penalties raises two separate questions. One, computers are obviously essential to administering the tax law in today's environment. But when they run out of control, they run out of control very quickly and they can be our worst enemy. Obviously, we need to rein those in.

My own view is with respect to the penalty calculations is that a lot of these mistakes are probably attributable to a hodgepodge of overlapping, inconsistent penalties, and I would just like to say

that I applaud your efforts in particular, and your colleagues' efforts in addressing the questions of penalty reform. I think until we restructure the penalty system, we are going to run into these kinds of problems. As I say, I strongly support and encourage the efforts you now have underway in that regard.

Senator PRYOR. Well, I am going to place in the record, with the chairman's consent, a copy of the IRS manual describing the computer problem. I hope the IRS will do more to actually fix this problem. The manual warning is helpful, but does not seem, to be totally remedying the situation.

[The information follows:]

3(15)(107)(14) (1-1-89)

Manual Computation Differs from Computer

(1) Occasionally the MCC computation may differ from the manual computation. This is because the computer is programmed to correctly deal with the majority of returns processed. Rarely, due to frequency and amount patterns of depositing, the computer may improperly computer a penalty.

(2) Keep in mind that the computer cannot determine taxpayer intent and because of that, a variance sometimes occurs after the 15th day of the second of third month of a quarter. This is because a previous month's "monthly" liability becomes due the same time as period (L) and (T) eighth-monthly amounts are due. (The computer will always apply payments received at this time to the periodic liability first, even if the taxpayer was paying the prior month's amount first.)

(3) Another source of difference occurs when the taxpayer's deposit requirements change during the period. Because each month is treated separately for deposit purposes, the taxpayer's pattern of payments may cause Master File to treat certain months as "monthly" requirements, where manual computations would show an "eighth-monthly" requirement. Because of this situation, modules with "over $500, under $3000 amounts, must currently be manually computed.

Mr. GOLDBERG. Senator, I feel very strongly on that subject and I hope you will share those cases with me in the near future.

Senator PRYOR. Mr. Goldberg, thank you.

A couple of quick reports, the GAO report that you referred to from last year finds that IRS makes critical errors in 31 percent of the correspondence handled in the IRS service centers.

Can we do better?

Mr. GOLDBERG. We can and will do better, Senator.

Senator PRYOR. And what will we do to make it better?

Mr. GOLDBERG. I think that, frankly, in the short run it is to some extent a band-aid process. I think essentially when you have a paper-driven system, which is what we have now, you are going to see mistakes. The ultimate fix to the problem is the tax system modernization effort that is underway.

Having said that, in the meantime we need to do better. I personally believe that when people out there talk about quality, correspondence is the thing they think about first, and so it is something that merits our ongoing attention. My own view and experience is that the IRS folks out there in the field are equally as frustrated by the process. I mean, they have to live with it day in and day out, and they have no more fun than the poor taxpayer in dealing with the lack of clarity and the lack of reasonable communications. I think it is a frustration we share and will address together.

Senator PRYOR. Mr. Chairman, I have one final question to the Commissioner?

Senator MOYNIHAN. Go right ahead.

Senator PRYOR. It relates to Section 89. You have heard of Section 89, all on this committee. Yes, I would like to change it to Section 90 if I could, so we could get away from that.

Senator MOYNIHAN. Get on with it and make show a sign of progress.

Senator PRYOR. Mr. Goldberg, we mandated Treasury to have the regulations of Section 89 in November 1988. The regulations did not appear until the early spring of 1989. This threw us in literal chaos throughout the country, small and large businesses alike were trying to prepare for Section 89 implementation.

It also caused the hiring of CPA's, attorneys, computer firms, et cetera, to try to comply with what they thought would be the ultimate regulations. I might say that, in the future, if we mandate in the law a certain time for the IRS or the Treasury to come forward with regulations, it would certainly serve the system well to comply with that mandate.

Do you have any comment?

Mr. GOLDBERG. Yes, Senator.

I hope you hold me and my colleagues to task if we do not meet those deadlines. I think one of the problems we have in dealing with those kinds of issues is that we fantasize every problem imaginable, try to address every problem imaginable, and I think collectively, starting with the legislative process and moving through the regulatory process, we have to keep it simpler. We are not going solve all the world's ills in legislation. We are not going to solve them in regulations, and we ought to just take it easy.

Senator PRYOR. We find it difficult holding you to task very often in the IRS, Mr. Goldberg, but I hope our relationship will be good. I know that you will be a fine Commissioner. We look forward to working with you in the future.

Thank you, Mr. Chairman.

Senator MOYNIHAN. Thank you, sir, and I would like to say I know you do not want to be indicted by the U.S. attorney for the Eastern District of New York.

Mr. GOLDBERG. Senator, I see a trip to Brooklyn in my very near future. [Laughter.]

Senator MOYNIHAN. Thank you very much, Mr. Goldberg.

Mr. GOLDBERG. Thank you very much.

Senator MOYNIHAN. We are very pleased and proud that you are returning to public service.

Mr. GOLDBERG. Thank you, sir.

Senator MOYNIHAN. And now——

Senator PRYOR. Is this Mr. Goldberg's family behind him?

Senator MOYNIHAN. Is that your family?

Senator PRYOR. It is a very beautiful family I might add.

Senator MOYNIHAN. Mrs. Goldberg, would you stand up with your children?

Mr. GOLDBERG. My wife, Wendy.

Senator MOYNIHAN. Good morning.

[Whereupon, Mr. Goldberg introduced his family.]

Senator MOYNIHAN. All right. That is three dependents.

Mr. GOLDBERG. And I will be back within the income limits before long. I should point out that Jake has an identical twin

brother, Sam, who is under the weather and could not join us today.

Senator MOYNIHAN. You claim four dependents, but you can only produce three. [Laughter.]

Senator PRYOR. Mr. Chairman, can you imagine how it would be for these fine young people to go to school in the next few days, years, or whatever, and hear, "What does your daddy do?"

"Oh, he is the Commissioner of the Internal Revenue Service."

I hope they learn to deal with that because I know it might not be too easy. [Laughter.]

Mr. GOLDBERG. Thank you very much, Senator.

Senator MOYNIHAN. I am sure they will be very proud of him. Thank you, Mr. Goldberg.

Mr. GOLDBERG. Thank you.

Senator MOYNIHAN. Now the committee has a singular honor to welcome before it, hardly for the first time——

I will ask our visitors to——

The committee has the great pleasure and honor to have before it the Honorable Julius L. Katz, one of the most distinguished public servants of his generation, a person who has been part of our——

I must ask our guests to respect Mr. Katz's presence and the committee's proceedings.

Mr. Katz has been a public service of renown, I think it is fairly said, for, well, what must pass—I do not know if he will appreciate hearing it put this way—for two generations in the life of Washington, and he is before us as a nominee for the position of Deputy U.S. Trade Representative.

Mr. Katz, we welcome you to the committee, sir, and if you have a statement, we would be happy to hear it, or if you would like to make some remarks, we would be happy to hear those.

STATEMENT OF JULIUS L. KATZ, NOMINEE TO BE A DEPUTY U.S. TRADE REPRESENTATIVE

Mr. KATZ. Thank you very much, Senator.

I have no formal statement. I wish only to say that I am very pleased to be here, and I greatly appreciate the committee making time available today, which is, I know, a very busy day for members and for the committee.

I believe there is no more important matter before the nation than our international trade policy, and I am honored to have been recommended by Ambassador Carla Hills and nominated by the President to fill the post of Deputy U.S. Trade Representative.

I wish to say also that I consider that the success of our trade policy depends on a partnership with the Congress, and I am committed to maintaining the closest relationship with this committee and with members of the staff in carrying out our responsibilities.

And finally, I would like to say that despite the many problems that we face in our trade relations, I think we have an enormous opportunity over the next several years to bring about fundamental reforms of the international trading system, and I am committed to bringing all of my energies to this task.

Thank you, Mr. Chairman.

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[The prepared statement of Mr. Katz appears in the appendix.]

Senator MOYNIHAN. Well, those are formidable energies and even greater powers of analysis as a succession of Presidents have realized and used to their advantage.

I see my distinguished friend, Senator Baucus, is here whose particular interest is in trade, and I am going to defer first to him and then to Senator Symms, and then I would like to ask you a question.

Senator Baucus.

Senator BAUCUS. Mr. Chairman, I will follow you.

Senator MOYNIHAN. Well, all right.

Let us just get one quick reaction, if you have any, to the meeting in the GATT, which took place yesterday and which widely reported in the Financial Times of London and in the New York Times.

The response to our Super 301 actions has not been friendly. Some of the nations named have been more understandably distressed, but the Financial Times speaks to an almost universal denunciation, and I do not want to claim more than that. The New York Times says, "U.S. targeted with criticism at GATT. Its threat of trade sanctions against three nations assailed," and then they lead is, "The United States came under sharp and virtually unanimous criticism today at the General Agreement on Tariffs and Trade."

Would you like to just comment on that, and I do not ask you to do more than tell us whether you think we have gotten ourselves into a situation where it is going to get hard to get out of, or what?

Mr. KATZ. No, I do not believe so, Senator. I think that there has been a great deal of confusion and misunderstanding about our actions. I think some of the commentary in the press has been off the mark, and Ambassador Yerxa, my colleague in Geneva, responded with a statement, copies of which will be made available to the committee, pointing out the mischaracterization of the action.

Mr. KATZ. The action is not to designate a target list or a hit list. We have not labeled countries "unfair traders" or designated unfair trading practices. What we did was to designate our trade liberalizing priorities, and we did so in a way that we believe is entirely consistent with our international obligations and with the General Agreement on Tariffs and Trade. Ambassador Yerxa made that very clear.

What we are proposing to do is to invite trading partners to consult with us and to negotiate on what we believe are substantial barriers to trade, the removal of which we think will benefit, not only our exports, but the international trading system. I think his statement was extremely well received by the council and our view is that we go on from here.

Senator MOYNIHAN. Would you expect us to encounter corresponding actions? I mean, I would think that the Japanese could take a 301 action against us probably; couldn't they? They could opt if they wanted to.

About a third of the American trade imports are now controlled under some quantitative measures; isn't that the case?

Mr. KATZ. I think that is probably high, Senator.

Senator MOYNIHAN. If you left out oil?

Mr. KATZ. I am sorry?

Senator MOYNIHAN. If you left out oil, would it be high?

Mr. KATZ. Well, we do not restrict oil.

Senator MOYNIHAN. I know.

Mr. KATZ. Well, if you left out oil in the calculation, that would obviously increase the percent.

Senator MOYNIHAN. We cannot do without oil, either.

Mr. KATZ. No.

But I have seen estimates of this which include measures which I would not regard as unfair trade barriers, such as anti-dumping actions or countervailing duty actions, which some analyses throw into the restrictions.

Senator MOYNIHAN. No, they are designed to open trade systems.

Mr. KATZ. That is right.

And moreover, even if you take some of the voluntary restraint arrangements which some people throw into the calculation, what you find is that our imports under those programs have grown substantially over the years, and in fact, we take a greater percentage of imports in such areas as textiles and steel and automobiles than do any of our trading partners. So I think those calculations are somewhat misleading.

Senator MOYNIHAN. It strikes me as a fair point, sir.

Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

I think in response to the Europeans and in response to other countries who have criticized the United States in the GATT, it is important to point out that the United States has the most open free market in the world, with the possible exception of Hong Kong, and that is an indisputable fact. I do not think anyone with any credibility who has seriously analyzed the degree to which all the countries in the world protect or do not protect their country's goods and services would disagree with that statement.

The United States has by far the most open free-market system in the world. It is true that in some products we are somewhat protected. But if you compare the United States with Europe, you compare the United States with Asian countries, you compare the United States with the developing countries, compare the United States with Brazil, or with India, the fact of the matter is that the United States is by far the most open free market in the world.

And these other countries, which are criticizing the United States, are frankly a bit upset in my judgment because we have begun to stand up for our rights as Americans, and saying, "We are calling a halt to all this, a halt to you countries who are closing your markets unnecessarily to U.S. products." That is the whole point of last year's trade bill and, more specifically, the whole point of Super 301. That is market opening. There is nothing in Super 301 which is market closing.

Super 301 is not an action which protects American products or American industries or American services. That is not what Super 301 is. Rather, Super 301 is market opening. It is saying to other countries, "You have to open your markets." It is not market closing, and that is very clear. Those who criticize know that is what it is.

But those who criticize in my judgment are just a little bit upset that finally the United States is standing up for its rights, encouraging other countries to open up their markets. That is what is going on here, and it is very clear. I know you, Mr. Katz, and Ambassador Hills and this government, will continue to fairly, appropriately, even-handed basis continue to exercise our rights to keep markets open.

In fact, Mr. Chairman, the United States has the best leverage in the world to open markets. We have more leverage than any other country to open markets because we are the largest economy in the world and we are the largest open economy in the world. And we, as Americans, have, not only an opportunity here to encourage other countries to open their markets, we must exercise our right and our ability to do so.

It is very clear that that is what is happening here, and I urge Europeans and others who are criticizing us to be wary of casting the first stone if we all live in glass houses. So I think that should be cleared up.

Mr. Katz, turning more to your specific area, I understand you will be the Deputy USTR for Canada, and also for the Uruguay Round; is that correct?

Mr. KATZ. That is right, Senator.

Senator BAUCUS. With respect to Canada, as you know in the U.S./Canadian free trade implementing legislation, we provided for its expedited treatment to encourage Canada to reduce its subsidies.

Can you tell me where we are? What is the progress of all that at this point?

Mr. KATZ. Well, I am not sure I would call it "expedited" since the agreement provides for a consideration over a 5-year period, and then if that does not succeed, then there are two more years after that. But I think where we are proceeding on an expedited basis is in the Uruguay Round in the group on subsidies, and there it is our intention, and we are determined, to arrive at agreements before the end of 1990, so that it is there that our principal emphasis is being placed, while at the same time, we are getting underway in our bilateral examination with Canada.

Senator BAUCUS. With respect to Canada again, as I recall even though the agreement provides for 5 years, the implementing language granted authority for only 2 years in order to expedite the ways to reduce Canadian subsidies.

If I might, Mr. Chairman, I see my time running out. Let me ask just one other quick question.

Senator MOYNIHAN. No, Senator Symms?

Senator SYMMS. I have no questions, so I would be happy to yield my time to you.

Senator BAUCUS. And that goes to the GATT Round.

Mr. Katz, you are a very firm advocate of the multilateral trading system. That is your reputation, and I, too, am a very firm advocate of the multilateral trading system. We have to get along in this world together. We have to adopt standards that encourage each country to open up markets.

We must remember, though, that whenever we as a country negotiate with other countries to reach further agreements as we now

are in the Uruguay Round, there is an institutional bias to reach an agreement solely for the sake of an agreement. Once a country starts the process of beginning to negotiate an agreement with other countries, there is a psychological compulsion to reach an agreement solely for the sake of reaching an agreement.

Senator MOYNIHAN. Yes, the signing ceremony.

Senator BAUCUS. That is particularly a problem for the United States for two reasons. The United States is the largest economy in the world. So when the United States enters into negotiations, there is an additional incentive, psychological compulsion, for the United States to reach an agreement because we as the largest country want to agree.

Even more importantly, we—there is a bit of American naivete in my judgment—believe that because we are good people, we are honest, God-fearing people, that it is only right and proper if you start an agreement process to reach an agreement, that it is only decent to reach an agreement. I think that is an American bias compared with the psychology of some other peoples and some other countries.

If we are going to enter into this GATT Round, and we are, and if we are going to reach an agreement which is a good agreement, an agreement that is good not only for Brazil or for India, for the EC, for Asian countries, and for other developing countries, but also an agreement which is good for the United States, it seems to me that we Americans have to send a very strong signal that we are prepared to walk away from a bad agreement. We are prepared to walk away from a bad agreement. It is far better for the United States to not agree to a bad agreement than it is for the United States to agree to a bad agreement.

Are you prepared as the Deputy USTR to recommend to Ambassador Hills and to the Administration that if the agreement that is tentatively reached is a bad agreement, you will recommend the United States not ratify it?

Mr. KATZ. Senator, let me say first that I am a strong advocate of a multilateral trade system, and the reason for that is not a matter of abstract theory. It is a matter of interest to the United States. We are a world power. We are a world economic power. Our interests are global, and therefore, I think it is in our interests wherever possible to achieve agreements on a multilateral basis.

Now with regard to negotiating style, I think that one must always go into a negotiation prepared to fail. Now obviously the objective is to succeed, and I accept your point on the psychology of a negotiation. It is indeed the case that once you get into to it, words and concepts begin to lose meaning and you begin to rationalize interests and try very hard to bring about an agreement.

But I think the situation now is somewhat different. I think we face some issues that are watershed issues, particularly in respect to agricultural trade and, in respect to the new areas of the negotiations, such as investment and services and intellectual property, where I think we must achieve substantial breakthroughs, and if we do not, then I think we are merely fooling ourselves.

Moreover, even if we were otherwise disposed to reach agreement which fall short of our standards and our objectives, I think we have the Congress to work with. Clearly we cannot bring back

an agreement negotiated in the middle of the night and slip it by the Congress.

Senator MOYNIHAN. Not by Max Baucus you can.

Mr. KATZ. I know that, sir, and I take your point that we have to hang in there and to be patient. We have set a goal. We have an international agreement that our goal is to finish the negotiations by the end of next year, but we are not going to be driven by a timetable.

Senator BAUCUS. Well, I strongly encourage you to send the signal that the United States is prepared to not agree to a bad agreement. When I say "bad agreement," I do not mean one that takes advantage of other countries. Rather I mean one where other countries are taking advantage of us, and if you send that signal now, I guarantee you that you will have a better agreement.

Thank you, Mr. Chairman.

Senator MOYNIHAN. Thank you.

Your point about agriculture and intellectual products is one which we increasingly discuss up here, and you would do, of course, and good luck to you, particularly on both scores.

Just one last little reference. In your very interesting paper on the Soviet Union and GATT, you mention the early discussions of the International Trade Organization, which, of course, never got by this committee, if I recall, and the GATT, which was Eric Wyndham-White and three secretaries for all those years, has gradually emerged—they have the ILO building in Geneva now.

Should we be giving some thought sometime to returning to have another look at the ITO as an organization, or do we have one and have its functional equivalent now?

Mr. KATZ. Well, I think in many respects we do have the functional equivalent. I think it has evolved. I suppose if we were starting all over again, we would do it differently, but I think we have to, as a practical matter, we have to work with what we have. And one of the issues in the negotiation is structural reform of the GATT.

Indeed, for the past two years I have served as chairman of a negotiating group on the functioning of the GATT system. I did so as a consultant to the USTR, and we have introduced some ideas in that group which will, I think, improve the GATT as an institution, will give it increased standing as an institution.

I would remind you, Senator, that it was not too long ago that—well, it was more than a decade ago—when we sent appropriation requests up here, we never put it in the name of the GATT because the Congress would not give explicit recognition to the GATT. We did so as part of the contingency line in the State Department appropriation. I think we have come a long way since then.

Senator MOYNIHAN. Yes.

Mr. KATZ. And I think we can build further on what we have and make the GATT, maybe not as perfect as we would like——

Senator MOYNIHAN. Perfect as the U.S. Congress.

Mr. KATZ. Well, yes, sir.

But I think we can do better than we have done to date.

Senator MOYNIHAN. Listen, when you have a spare weekend—and I make that in jest—maybe you could send us some notes about the institutional organizational changes that we might have

in order because you do have the impression of a institution that evolved, but maybe you would not have designed it that way, and maybe that is a good thing, too. But you have thought about this. You have watched these things. Your thoughts would be very important to this committee, which is not seized of this subject, but perhaps should know more about it than it does.

Mr. KATZ. Very good. Very good, Senator. I will do that.

Senator MOYNIHAN. And we thank you very much, sir. We welcome you back to public service. We will have you confirmed in, oh, 2 or 3 months, something like that in our typical negotiating techniques.

Mr. KATZ. Thank you.

Senator MOYNIHAN. I am afraid I have to tell you that this will be going out tomorrow. We will make an effort to clear these nominations by today and get them on the floor tomorrow. It is subject to objection and we sometimes get them for the most random reasons that have nothing to do with personal—in which event, you will have to wait until after the Fourth of July. But you will be there, you may have not doubt.

And thank you very much, sir.

Mr. KATZ. Thank you, Senator Moynihan.

Senator MOYNIHAN. And now finally this morning we are pleased to welcome Mr. Michael J. Astrue, who has been nominated by the President to be General Counsel to the Department of Health and Human Services.

Just one moment.

Mrs. Katz, were you with your husband?

I am sorry, Mrs. Katz.

[Whereupon, Mr. Katz introduced his family.]

Senator MOYNIHAN. Jessica and Jonathan, we welcome you. We welcome you all, Mrs. Katz, in particular. Forgive my lack of consideration. It was very kind of you to have been present, and we appreciate your having done, and remember that, young fellow. It may happen to you someday, more likely to your sister. [Laughter.]

Good morning, sir. You have a statement. We would be very happy to hear, or you might want to just summarize it. Do exactly as you wish.

STATEMENT OF MICHAEL J. ASTRUE, NOMINEE TO BE GENERAL COUNSEL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. ASTRUE. Thank you, Mr. Chairman.

I have a very brief statement which I will summarize.

Senator MOYNIHAN. We will put it in the record as if read.

Mr. ASTRUE. Thank you.

It is an honor to appear before you today. Over the four years that I have worked at HHS and at the White House, I have developed a great respect and admiration for this committee, and I am looking forward to working with all of you.

I want to take this opportunity to thank President Bush and Secretary Sullivan for nominating me to this position, and I will do my very best to live up to the confidence that they have shown in

me. I would also like to thank my wife, Laura, for her support and——

Senator MOYNIHAN. I believe Mrs. Astrue is in the room, and we welcome you, Mrs. Astrue.

Mr. ASTRUE. We also have two small children, I will note for the record, that we decided would not properly respect the rules of decorum of the committee.

But I do look forward to the many challenges in the Department.

I would be pleased to answer any questions you might have.

Senator MOYNIHAN. Sure.

Tell us, just for the record, your understanding, what does the General Counsel do in the Department of Health and Human Services?

Mr. ASTRUE. The General Counsel is the senior legal officer of the Department, supervises an office of about 450 attorneys, about 850 employees total, provides advice to the Secretary and the senior officers of the Department on the legality of rules, regulations, and proposed legislation.

Senator MOYNIHAN. I ask the question because one of the more difficult things that came up in the earlier parts of this decade, and many did, was the decisions made in the Social Security Administration with respect to the review of disability benefits and the, sort of, what appeared to almost to be quota systems of disallowing benefits and then administrative hearings. More than a majority of the benefits disallowed were reinstated. When they were challenged, U.S. attorneys around the country declined to defend the government, to represent the government.

Are those things which your office has some oversight view of, or would they be kept internal to Social Security?

Mr. ASTRUE. Certainly, my office plays a vital role in advising the Social Security Administration as to the legality of its actions. It is an area of particular concern to me. I think perhaps if you noted on the questionnaire that I supplied the committee, I have taken a particular interest in the area of non-acquiescence. Non-acquiescence rulings are published——

Senator MOYNIHAN. Help a layman, "non-acquiescence?"

Mr. ASTRUE. Non-acquiescence is a policy that the Social Security Administration had from sometime in the early sixties through the mideighties in which they would refuse to acknowledge the precedential value of a court of appeals decision within the jurisdiction of that court of appeals, and it is an area that has concerned me.

I prevailed in 1985 in insisting that summaries of non-acquiescence rulings be published in the Federal Register. There was a dispute about that at one point in the Department. The notice of proposed rulemaking terminating the Social Security Administration's policy of non-acquiescence was largely a project which I got started within the Agency.

Senator MOYNIHAN. I see. I see. That is heartening.

Mr. Astrue, I wonder if I could ask of you if you might send to the committee a statement on that sequence and tell us what you did and what happened——

Mr. ASTRUE. I would be pleased to do that.

Senator MOYNIHAN [continuing]. What the problem was, how you approached it.

Mr. ASTRUE. I would be pleased to do that, Senator.

Senator MOYNIHAN. I think we would like to know that and have it in our files because it came to us in indistinct portions and manner, as you can imagine.

Mr. ASTRUE. I would be pleased to do that, Senator.

[The statement appears in the appendix.]

Senator MOYNIHAN. One other thing I wanted to ask you, and this nothing to do directly, but we are glad to see you. We welcome you.

Mr. ASTRUE. Thank you.

Senator MOYNIHAN. But it is a fact that we have yet to have a nominee sent to us for the Assistant Secretary for Family Services, and we have discussed this. I would not like the record to indicate that I am just suddenly assaulting you with the matter.

This committee worked very hard. This committee worked for 25 years on changing the welfare system. It took about 25 years from the original widow's pension that was there in Title 4 of the Social Security Act of 1935, and after great effort, this proposal was agreed to, having first been brought to us, the initiative came from the governors who said, "You know, it can be done. Do not believe it cannot be done, and here is what to do," and the consensus emerged. The initiative was wholly in Congress and the governors.

The Department of Health and Human Services, it was just simply—its role was to say, "No." You said, "A." They said, "No." If you said, "Non-A," they said, "No." They were just naysayers and contributed nothing, no data, no thoughts, objections which never were spelled out. I mean, it was complete collapse of policy participation.

And then we realized that this had to do with basically the fact that it was not being particular willful. It was just that there was no capacity in the Department of Health and Human Services to think about the subject to any purpose. There had been, 25 years ago you would have had views. They would not necessarily have been right or necessarily wrong, but they were views.

The subject had been shoved down. I do not know what the internal dynamics of the Department are, but you do better than I. HHS has emerged as a health grant-making department with a lot of regulatory functions in the health area with a very little capacity to deal with this particular subject, which may be its most important one.

About a third of the children born in this decade will be on welfare before they are age 18, and our effort to change this was a big effort. It came out of this Congress 97 to 1, and it said, "We will do something we have tried a quarter century to do," and nothing has happened. The Administration has been in place for 8 months now as near as makes no matter, 6 months, technically, or again, as near as makes no matter. A year goes by very quickly and then it is over.

What has happened? What is wrong? I mean, you know, this is a form of—I mean, are we facing a willful decision in the Department not to carry out the program?

Mr. ASTRUE. No, I do not believe so, Senator. I believe there have been some difficulties in the personnel process, which has become a very hard one. In order to select candidates, have them pass all the

appropriate ethical standards and that type of thing, I know that it has taken longer in some particular instances than we would all like, but I have every expectation that they will have a nominee to the Senate as quickly as possible.

For my own part, I can say that I spent a little over three years in the Department working primarily on Social Security and welfare issues. I personally have an intense interest in them, and whatever I can do——

Senator MOYNIHAN. Well, why don't you take over and do it?

Mr. ASTRUE. Well, the President did not ask me, Mr. Chairman.

Senator MOYNIHAN. Do it anyway. He will not find out. We will not tell.

Mr. ASTRUE. Well, I am afraid, Mr. Chairman, I have a more narrow view of the function of the General Counsel, but certainly I do have an intense interest in these issues. I do expect to be involved in discussions in the Department where these issues will come up, and I will certainly do my very best to make sure that these get fully aired and that we do the best possible job that we can.

Senator MOYNIHAN. Can I put it to you, sir, that you do not have the institutional capacity to handle this legislation? You have to create it. You have to create it the way NASA was created or the National Institutes of Health were created.

You set up regulations on the new legislation. The governors came in appalled. Everything they had wanted disappeared in the regulations. I mean, just the opposite of what they wanted, and it is deadening. It is killing, and it goes from the top and it goes to the bottom.

There is no democratic society on Earth would treat children the way we treat them. They are the poorest group in our population. I mean, every other child lives in a single-parent family before they are age 17. I see you are on the National Council for Senior Citizens, but, you know, there are no lobbyists for children of any real consequence. They do not vote.

When we are dealing with children out here, you can shoot deer in the hallways when we are holding a hearing on children. When you bring up capital gains or catastrophic health insurance, it takes a police escort to get down Gucci Gulf, and in January, this administration was not responsible for the fact that HHS could not handle this, and was not. By September, you will be, and you should be. You accept them, you know. If you want to be President, then you have to, you know. And that means that you have weeks.

I mean, not one thing has come back from that Department that suggests there is any comprehension of this subject, and that comes on the verge of, that is heart breaking. Do you hear me? Not one sign of, you know, is there life on Mars? I mean, you know, any indication that there is any life in the Department on this subject. And you lose another generation of children.

Not you, sir. I am just saying it because I think you would understand that I took the trouble to.

Mr. ASTRUE. Yes, you did that. I thank you for that, Senator.

Senator MOYNIHAN. And I thank you for your response, and we congratulate you on this. As I said, we will try to get you on the calendar tomorrow. Do not count on it.

Mr. ASTRUE. I understand.

Senator MOYNIHAN. But have a good Fourth of July weekend.

Mr. ASTRUE. Thank you. I will, Senator.

Senator MOYNIHAN. You will be able to work her all during July and August, and with that we guarantee.

Mr. ASTRUE. Thank you very much.

[The prepared statement of Mr. Astrue appears in the appendix.]

Senator MOYNIHAN. Now it falls to the chairman—we are, of course, on the floor at this point and many senators have to be there. Eleven Senators, a clear quorum for this purpose, has been present, and I will move the nominations en banc.

Mr. McMurtry, do you have something you would like to tell me?

Those in favor will say aye.

Those opposed?

There being none opposed, the nominations are approved en banc.

I am now going to recess the hearing, as I think that we will want to, for technical reasons, adjourn later today. Is that right, sir?

This hearing stands in recess.

I thank our staff. I thank our guests.

[Whereupon, at 11:24 a.m., the hearing was concluded.]

APPENDIX

Alphabetical Listing and Material Submitted

Prepared Statement of Michael J. Astrue

Mr. Chairman and Members of the Committee: It is an honor to appear before you today. Over the past four years that I have served at HHS and the White House, I have developed a great respect and admiration for this Committee.

I want to take this opportunity to thank President Bush and Secretary Sullivan for asking me to serve as General Counsel of the Department of Health and Human Services. I will do my very best to live up to the trust that they have placed in me by this nomination. I also want to thank my wife, Laura, for her support and sacrifices, which have allowed me to enter and continue in public service.

I look forward to assisting Secretary Sullivan in working with you and your colleagues in the Congress, and I pledge to do my best to help the Department meet the challenges of delivering equitable and efficient health care and human services to the public.

Mr. Chairman, I have concluded my prepared remarks. I would be pleased to answer any questions that you or the other Members of the Committee may have, and again I thank you for the opportunity to appear here today.

Encloures.

Responses to U.S. Senate Committee on Finance Questionnaire for Nominees

BIOGRAPHICAL

1. Michael James Astrue
2. Voting residence: 47 Benton Road, Belmont, MA 02178
   Local residence: 5712 Cedar Lane, Columbia, MD 21044
3. October 1, 1956; Fort Dix, NJ
4. Married Laura Whitney Mali on June 16, 1979
5. James Connelly Astrue (born February 9, 1987); Caitlin Whitney Astrue (born June 24, 1988)
6. Yale University, 1974-1978 (B.A., 1978)
   George Washington University, 1979 (two graduate courses in public administration)
   Harvard Law School, 1980-1983 (J.D., 1983)
   Tufts University, 1984 (graduate course in statistics, audited course in international trade)
7. Summers 1978 and 1980—Teacher's assistant; Milton Academy; Milton, MA
   1978-1979—Staff assistant; Senator Richard S. Schweiker, Washington, D.C.
   1979—Research assistant/data analyst; National Council of Senior Citizens, Program on Criminal Justice and the Elderly; Washington, D.C.
   1979-80—Research assistant/legislative coordinator; National Social Science and Law Project; Washington, D.C.
   Summer 1981—Summer associate; Shipman & Goodwin; Hartford, CT
   Summer 1982—Summer associate; Ropes & Gray; Boston, MA
   1982-1983-Sporadic work in Cambridge, MA for Professor Paul Bator (revising Hart & Wechsler's *The Federal Courts and the Federal System*) for Professor Arthur Miller (research concerning the economics of court costs and delays) and Bar-Bri Bar Review (operated VCR for bar review course)
   1983-1984—Law Clerk; The Honorable Walter J. Skinner; Boston, MA

August 1984—Visiting Fellow; Foundation for Economic Research; Needham, MA

1984-1985—Associate; Ropes & Gray; Boston, MA

1985-1986—Acting Deputy Assistant Secretary for Legislation (Human Services); U.S. Department of Health and Human Services; Washington, D.C.

1986-1987—Legal Counsel to the Deputy Commissioner for Programs and Policy; Social Security Administration; Baltimore, MD

1987-1988—Counselor to the Commissioner; Social Security Administration; Baltimore, MD

1988-Present—Associate Counsel to the President; The White House Office; Washington, D.C.

8. In addition to the Federal positions listed in the previous question, I would note that my work at the National Council of Senior Citizens was substantially funded by the Law Enforcement Assistance Administration, the Administration on Aging, and the Community Services Administration. My work at NSSLP was substantially funded by the Legal Services Corporation.
9. Yale Political Union, 1974-1978 (Chairman of the Rules Committee 1975-1976); (President 1976-1977)

Tory Party, Yale Political Union, 1974-1978 (Secretary-Treasurer, 1975); (Chairman, 1975)

Yale Debate Association, 1974-1975, 1976-1978 (Manager 1977-1978)

Yale Lit, Editorial Board, (1976 ?)

Freshman Conference Committee, Yale Religious Ministry, 1975-1978

Yale Philosophy Department Undergraduate Committee, 1977-1978

Ripon Society 1980-1983 (Secretary 1981-1982); (Vice President 1982-1983)

American Judicature Society, 1983-1985

Massachusetts Bar Association, 1983-1985 (Health Law and Civil Litigation Sections)

Middlesex County Bar Association, 1983-1985 (Member of Board, Young Lawyers' Division 1983-1985)

Federalist Society, 1986-present

Harvard Journal on Legislation, 1980-1982 (Board of Editors 1981-1982)

Harvard Law Community Association, 1980-1983

10. I have volunteered for a large number of campaigns in the past fifteen years. I have never served in a salaried position for a campaign or as an officer of a campaign committee. I made small ($50 or under) contributions to the Reagan-Bush campaign (1980), Congresswoman Nancy Johnson (1981) and the gubernatorial campaign of Andrew H. Card, Jr. (1983) I believe that I have also contributed similar amounts to the Massachusetts Republican Party on a few occasions.
11. I graduated magna cum laude from Yale College with distinction in philosophy and English. I won five Yale College awards for scholarship, debate, and oratory. I graduated cum laude from Harvard Law School. In January, 1989, Boston Magazine named me one of the "Faces to Watch in 1989."
12. Publications:

"The Massachusetts 'Little FTC Act': A Law at War With Itself," Foundation for Economic Research Economic Report (October, 1984)

"Nuclear-free Zone Means Lost Jobs and Taxes," Boston Globe (July 26, 1983)

Review, The Reverse Discrimination Controversy: A Moral and Legal Analysis, Harvard Journal on Legislation, Volume 18, Number 2 (Spring 1981)

Review, The Permanent Campaign: Inside the World of Elite Political Operatives, Harvard Journal on Legislation, Volume 18, Number 1 (Winter 1981)

Final Report: Crime Prevention—Victim Assistance Program—Milwaukee, Wisconsin, National Council of Senior Citizens, 1979 (with Lawrence J. Center)

Final Report: The Elderly Victimization Prevention and Assistance Program—New Orleans, Louisiana, National Council of Senior Citizens, 1979 (with Lawrence J. Center)

Final Report: Senior Citizens Crime Assistance and Prevention Program—New York City, New York, National Council of Senior Citizens, 1979 (with Lawrence J. Center)

Final Report: Elderly Antivictimization Project—Washington, D.C., National Council of Senior Citizens, 1979 (with Lawrence J. Center)

Final Report: Senior Citizens Community Safety Program—Chicago, Illinois, National Council of Senior Citizens, 1979 (with Lawrence J. Center)

Final Report: Security Assistance for the Elderly—Los Angeles, California, National Council of Senior citizens, 1979 (with Lawrence J. Center)

"The Trials of Michael Dukakis," Yale Political Journal, Volume 1, Number 2 (February 1976)

Between November, 1987 and April, 1988, I wrote four columns for the "Senior News" section of the Belmont (MA) Citizen-Herald. These columns explained recent developments relating to: fraudulent identification with the Social Security Administration by con artists; Federal income tax changes most likely to affect the elderly; the Social Security earnings test; and Federal nursing home regulation.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC, June 22, 1989.

Dear Mr. Chairman: At the request of Senator Moynihan, I am supplying more detailed information about my views and record concerning the Social Security Administration's former "nonacquiescence" policy.

The Social Security Administration's policy from the early sixties until 1986 regarding compliance with the decision of Courts of Appeals inconsistent with my understanding of the proper relationship between an Executive branch agency and the judicial system. While I believe that there are substantial legal arguments that supported the agency's position, I believe that agencies have obligations to the public that exceed their minimum legal duties.

My actions in the Department consistently reflected this view. In 1985 I successfully insisted, despite strong agency opposition, that summaries of nonacquiescence and acquiescence rulings be published in the Federal Register. From September, 1986 until April, 1988, I advised Commissioner Hardy to reject every recommendation that the agency "nonacquiesce." Commissioner Hardy followed this advice on every occasion and strongly supported my efforts to terminate the nonacquiescence policy through formal rule-making. The November 18, 1988, Federal Register notice proposing a termination of the policy is the result of these efforts.

Thank you for providing me with this opportunity to clarify my views.

Sincerely,

MICHAEL J. ASTRUE,
General Counsel-designate, Department of Health and Human Services.

MICHAEL JAMES ASTRUE

5712 CEDAR LANE, COLUMBIA, MARYLAND 21044

Experience:

1988–present—**Executive Office of the President,** Washington, DC

Associate Counsel to the President: advise and represent the President and senior White House officials on a wide range of legal and ethical issues with some concentration in health and social welfare matters; assist with criminal and civil litigation involving the Executive Office of the President.

1985–1988—**United States Department of Health & Human Services,** Washington, DC & Baltimore, MD

Counselor to the Commissioner, Social Security Administration (1986–1988): in this and similar position provided legal, legislative, and policy advice to the Commissioner and other HHS executives; served as one of five members of the SSA Policy Council; negotiated agreements with senior officials of the White House, Department of Justice, and other government agencies.

Acting Deputy Assistant Secretary for Human Services legislation (1985–1986): supervised all legislative advocacy in the areas of Social Security, welfare, medical malpractice, immigration and social services for the Department; represented the Administration at Congressional mark-ups and other events.

1984–1985—**Ropes & Gray,** Boston, MA

Associate: worked as a trial attorney with some specialization in health law cases.

1983–1984—**The Honorable Walter J. Skinner,** Boston, MA

Law Clerk: drafted opinions and performed legal research for a judge of the United States District Court; revised case management system

1978–1980—Worked as a staff member for Senator Richard Schweiker and as a social scientist specializing in program evaluation and survey research for two non-profit organizations.

Education:

Harvard Law School, 1980–1983, J.D. cum laude

Yale University, 974–1978, B.A. magna cum laude with distinction in Philosophy and English

• Also nine credit hours of graduate courses in public administration, statistics, and governmental budgeting at Tufts University and George Washington University.

• As an undergraduate, served as president of the Yale Political Union; wôn the Pierson Scholarship Award and four prizes for oratory and debate: selected as a state finalist for the Rhodes Scholarship and a regional finalist for the Marshall Scholarship.

• As a law student, served on the editorial board of the Harvard Journal on Legislation.

PREPARED STATEMENT OF FRED T. GOLDBERG, JR.

Mr. Chairman, it is a great honor to appear before you today as the President's nominee for Commissioner of Internal Revenue. I am grateful to you and the members of your Committee for holding this confirmation hearing in the midst of a busy Senate schedule, and I wish to thank-Secretary Brady for his endorsement and President Bush for nominating me.

Our system of tax administration has been and remains a national treasure and the envy of the world. At the same time, however, I believe that there are challenges we must confront if we are to maintain and enhance our system. Most notably:

1. We must deliver on our commitment to quality—to treating the taxpayer as customer. Lip service alone will not suffice.

2. We must successfully modernize our computer systems; the day of reckoning truly is just around the corner.

3. We must simplify the system. While the 1986 Act greatly eased the compliance burden for many millions of individual taxpayers, the complexity and uncertainty facing many individuals, large and small businesses, and IRS agents alike is of staggering proportions.

4. We must be held accountable in formulating and implementing our budget to meet our goals and objectives. It is clear that expenditures by the IRS generate substantial net revenue to the federal government; it is also clear that significant incremental expenditures will be required in connection with system modernization during the next several years. These facts do not relieve the IRS of the need for budget accountability; they make that need all the more compelling.

There are a number of studies addressing these and other issues; I personally believe that last year's joint IRS/GAO report, "Managing IRS," is an exceptionally fine road map for the years ahead. Words alone, however, will not take us very far. The question is whether we can deliver on quality, system modernization, simplification, financial accountability, and the like.

I am confident that these and other challenges will be addressed successfully in the years ahead. The 120,000 IRS career employees are an exceptionally dedicated, capable and honorable group of public servants and are led by a fine cadre of professional managers. I applaud the IRS-NTEU Joint Quality Improvement Process Agreement and I am most eager to work with all IRS employees in building a better tax system.

At the same time, however, the IRS cannot "go it alone" and should not try. Any success will be attributable to the ongoing efforts of you and your colleagues in the Congress, the commitment of this Administration to fair and efficient tax administration, the cooperation of many thousands of tax professionals, and—above all—the American public's commitment to our system of voluntary compliance. We can and must work openly and cooperatively with all those who have a stake in good tax administration.

I had the honor and privilege of Serving in the public sector before as Chief Counsel of the Internal Revenue Service. I hope that the Committee and the Senate look favorably on my nomination, because I could not be more enthusiastic at the prospect of serving again. I would be pleased to answer any questions the Committee may have.

Enclosures.

RESPONSES TO U.S. SENATE COMMITTEE ON FINANCE QUESTIONNAIRE FOR NOMINEES

BIOGRAPHICAL

1. Name: Frederick Thaler Goldberg, Jr.
2. Address: 8621 Chateau Drive, Potomac, Maryland 20854.
3. Date and Place of Birth: October 15, 1947, St. Louis, Missouri.
4. Marital Status: Married to Wendy Meyer Goldberg
5. Names and Ages of Children: Rachel T. Goldberg, age 10; Benjamin D. Goldberg, age 8; Samuel W. Goldberg and Jacob M. Goldberg, age 5.
6. Education: September 1957 to June 1965—St. Louis Country Day School, St. Louis, MO—High school diploma.

   September 1965 to June 1969—Yale University, New Haven, CT—B.A.

   September, 1969 to January 1970 and January 1971 to June 1973—Yale Law School, New Haven, CT—J.D.
7. Employment Record: September 1967 to September 1969—Research Assistant, Yale University, New Haven, CT.

   January 1971 to June 1971—Administrative Assistant, Urban Studies Department, Yale University, New Haven, CT.

   June 1971 to September 1971—Summer Associate, Jenner & Block, Chicago, IL.

   September 1971 to June 1972—Administrative Assistant to the Dean of Calhoun College, and Instructor in Economics and Political Science, Yale University, New Haven, CT.

   June 1972 to September 1972—Summer Associate, McBride, Baker, Wienke & Schlosser, Chicago, IL

   May 1973 to March 1978—Acsociate, Latham & Watkins, Los Angeles, CA.

   March 1978 to August 1981—Associate/Partner, Latham, Watkins & Hills, Washington, D.C.

   December 1982 to March 1984—Partner, Latham, Watkins & Hills, Washington, D.C.

   March 1986 to Present—Partner, Skadden, Arps, Slate, Meagher & Flom, Washington, D.C.
8. Government Experience: January 1970 to December 1970—Special Assistant to Assistant Director Office of Economic Opportunity, U.S. Govt., Washington, D.C.

   August 1981 to December 1982—Assistant to Commissioner (and Acting Director, Legislation and Regulations Division, 3/82-12/82), Internal Revenue Service, Washington, D.C.

   March 1984 to March 1986—Chief Counsel, Internal Revenue Service, Washington, D.C.
9. Memberships: Board Member, Norton Simon National Foundation, Washington, D.C.

   Board Member, The Washington Opera, Washington, D.C.

   Professional, California Bar Association, Los Angeles, CA

   Professional, D.C. Bar Association, Washington, D.C.
10. Political Affiliations and Activities: I have been a registered Republican for the past 10 years. During that period, my only political contributions have been to individual Republican candidates for various national offices. During that period, I believe that my total contributions to all such candidates have been less than $10,000. With the exception of $1,000 contributed to Pete Dawkins and $500 contributed to Senator Dole, I do not recall the amounts or recipients of any other contributions. During the 1988 presidential campaign, I reviewed certain tax and financial information furnished by various individuals under consideration as potential Republican vice presidential nominees.
11. Honors and Awards: I graduated cum laude from Yale College in 1969; Commissioner's Award (1982); Commissioner's Award (1986); Treasury's Exceptional Service Award (1986).

12. Published Writings:

Note, "Equalization of Municipal Services: The Economics of Serrano and Shaw," 82 Yale Law Journal 89 (1972); reprinted-in Ackerman, Bruce A., ed., The Economics of Property Law.

Op. Ed., "Five Phony Arguments: Banks Conducting Campaign of Misinformation On Withholding," St. Louis Post Dispatch, March 3, 1983.

Article, "Industry Specialization in Chief Counsel's Office," 37 The Tax Executive 289 (1985), with Pamela F. Olson.

13. Speeches:

Title/Topic	Date(s)	Program Sponsor
Real Estate & The Tax Reform Act of 1986.	Winter 1986	ULPI.
They Slowed The Traffic & Shot The General: The '86 Code & The Brave New World Of Subchapter C.	October 1986	WTI.
T&E, Inventories & Bad Debts Under The Code Of '86 ("If you liked audit logs, you'll love . . ." with Edward E. Bintz and Pamela F. Olson.	Winter 1986/87	TEI.
The General's Last Stand: The '86 Code & The Remaking of Subchapter C.	December 1989	University of Chicago.
Tax Shelters (outline not available)	Winter 1986	Lain & Business/ Fordham University.
Giving (and Getting) Guidance Under The '86 Code.	Winter 1986/87	TEI.
Deferred Compensation for Executives (with Edward E. Bintz).	1986, 1988	N.Y.U. Tax Institute.
Testimony, IRC Penalty Provisions	March 1988	(Hearings, Oversight Subcommittee, House Ways & Means Committee).
IRS Audits & Appeals	April 1988	TEI.
Current Developments (no written text).	April 1988	Federal Bar Association.
Large Case Controversies: Where The IRS Appears To Be Headed.	May 1988	TEI.
Breaking Up Is Harder To Do (with Joseph M. Doloboff).	June 1988	TEI.
Current Developments (no written text).	March 1989	Federal Bar Association.

14. Qualifications: Extensive private sector experience as a tax professional; extensive government experience as Assistant to the IRS Commissioner and as IRS Chief Counsel; substantial management experience in private law firm context and, more importantly, as IRS Chief Counsel; commitment to public service; a clear sense of the major challenges facing the tax system at the present time.

U.S. SENATE,
Washington, DC, June 23, 1989.

FRED T. GOLDBERG, JR.,
Commissioner Designate,
Internal Revenue Service, Washington, DC.

Dear Commissioner Goldberg: We both share an intense interest in fairly resolving the needs for space allocation for both the Federal Courts and the U.S. Attorneys in the Eastern District of New York and for the satisfactory placement of IRS

operations servicing Brooklyn, Queens, and Long Island, but we also share a determination that a decade of delay must end by deciding now to move the IRS from its present location.

Accordingly, we have dedicated a good deal of time to the study of the needs of the U.S. Attorney, the courts and the IRS with a view toward long-term and short-term solutions for their respective needs. The key appears to be a speedy timetable for the relocation of IRS operations to a site convenient for the staff and to the public served by that office.

Acceptable space within the service area of the IRS District Office should be obtainable early enough to conclude a move to retrofitted space for each department within an eighteen month time frame.

We are informed that the General Services Administration will move as expeditiously as possible to accomplish that move and to provide interim facilities of appropriate scale, amenity, and security for all concerned.

Your personal assurance to work toward this goal with the full commitment of your national office staff has encouraged us that resolution of the dire needs for space will be forthcoming soon.

Thank you for your letter of June 22 and please accept our best wishes as you embark on your tea as Commissioner of IRS.

Sincerely,

Senator PATRICK MOYNIHAN.
Senator ALFONSE D'AMATO.

Hon. PATRICK MOYNIHAN,
U.S. Senate, Washington, DC.

Dear Senator Moynihan: This is in response to your June 23, 1989, letter to then Commissioner Designate, Fred T. Goldberg, Jr., as well as to provide you with an update on the progress of the Internal Revenue Service's (IRS's) space situation in Brooklyn, New York.

Please accept our apology for the delay in responding to your letter; however, our initial reading led us to conclude that it did not require a reply.

As you know, the IRS shares your concern over the lengthy delays in resolving the Brooklyn space acquisition issue. To that end, we have been working closely with the General Services Administration (GSA) to acquire space for our own needs and to provide relief to the Federal District Courts and the U.S. Attorney's Office.

IRS was given a Delegation of Authority from GSA to acquire 60,000 square feet of space in downtown Brooklyn. The purpose of this Delegation was to provide interim relief to IRS and the Federal District Courts via a partial relocation of the IRS employees housed in the Federal Building located at 225 Cadman Plaza. In turn, this move would allow for the construction of three additional courtrooms in the space vacated by IRS. The award of the lease for the 60,000 square feet is scheduled for early this month. At this time, we do not envision any delays.

Regarding the move to a permanent facility, I requested that Mr. John Wedick, Deputy Commissioner (Planning and Resources) and Mr. Cornelius Coleman, Regional Commissioner, North Atlantic Region, personally assess the proposed delineated area and make a recommendation.

Mr. Wedick and Mr. Coleman made an onsite inspection of the Brooklyn area, reviewing the demographics and the need for reasonable proximity to the courts, state and county buildings. Based upon their review, they concluded that the Government and the public would be best served by remaining in the Brooklyn commercial district. They further determined that these needs could be met by expanding the prior delineated area to include a larger section of the Brooklyn commercial district. This has been formally submitted to GSA for further action.

GSA has reviewed the newly expanded delineated area and based on their knowledge of the buildings now included, and the capability of developers who operate in the area, they are convinced that there will be competition for the Brooklyn District Office acquisition.

Officials from the IRS National Office and the North Atlantic Region will continue to work closely with GSA to ensure a timely resolution.

I wish to reassure you that I will personally monitor this situation and that a satisfactory conclusion of this matter is a top priority of the IRS.

Please do not hesitate to contact me if you would like more detailed information or if I can be of further assistance to you.

Sincerely,

MICHAEL J. MURPHY.

DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE,
Washington, DC, July 11, 1989.

Hon. JOHN C. DANFORTH,
Committee on Finance,
U.S. Senate, Washington, DC.

Dear Senator Danforth: I want to thank you for taking time from your busy schedule to introduce me at my recent confirmation hearing before the Finance Committee. I also appreciate your courtesies toward my family at the hearing.

I look forward to an open and productive working relationship in the finest "Show Me" tradition with you and the other Members of the Committee. Based on your comments during the hearing, I have asked Gayle Morin, the Acting Assistant to the Commissioner (Legislative Liaison), to explore with your staff any suggestions you have for improving tax administration. Gayle can be reached on 566-4071.

Please let me know if I may be of any further assistance.

Best regards.

Sincerely,

FRED T. GOLDBERG, JR.

REMARKS BY JULIUS L. KATZ, CHAIRMAN, THE GOVERNMENT RESEARCH CORP., WASHINGTON, DC, SEPTEMBER 20, 1988

INTERNATIONAL CONFERENCE ON USSR PARTICIPATION IN THE GATT

How to fit centrally planned economies into the GATT system has been an issue that has puzzled founders of the GATT from its origins in 1947. Over the past four decades, there have been pragmatic responses to the applications of several of the Eastern European non-market economies. Yugoslavia, Poland, Hungary, and Rumania have been admitted, each on somewhat different terms, as considered to befit the circumstances of each country. The terms of accession for such countries as Yugoslavia and Hungary, which had moved to more decentralized economic regimes, were, after transition periods, based largely on tariff commitments; arrangements for the more centrally controlled economies of Poland and Rumania, on the other hand, have been based upon global purchase undertakings.

While the performance of these countries as GATT contracting parties has been mixed at best, there seems to be little reason to believe that their participation has: had a significant adverse impact on the workings of the GATT. Because of the relatively small size of these economies and the small role they play in world trade, the Eastern European countries do not have a significant impact on the GATT.

The prospect of Soviet accession to the GATT, however, raises more serious and difficult issues. This is because of both the size of the Soviet economy and the rigid character of its economic system. The United States and other GATT contracting parties have made explicit their position that they are not prepared at this time to consider the Soviet overtures for accession.

The fundamental question raised by Soviet accession to the GATT is whether the USSR can now or in the foreseeable future meet the basic obligations of the GATT. Because there are serious doubts that the USSR is likely to be able to meet these obligations, there are doubts that it would be possible to achieve with the USSR an equitable balance of rights and obligations, which in the final analysis is the fundamental premise which underpins the GATT system.

To be more specific, the basic obligations of the GATT are nondiscrimination and competition. Contracting parties of the GATT undertake generally to grant to other parties most-favored-nation treatment (i.e., not to discriminate in their policies and practices as between other GATT members). They also undertake to foster competition by reducing tariffs and removing other barriers to trade. I should hasten to add that the GATT is not a perfect instrument—it provides for a number of exceptions to these obligations which I need not specify here. But, notwithstanding the exceptions, the fundamental thrust of GATT philosophy is nondiscrimination and competition.

The USSR undoubtedly would argue that it does not discriminate among its trading partners and that it could, therefore, subscribe to a nondiscrimination obligation. It is, however, an essential element of a centrally planned economic system that decisions to buy or sell are made arbitrarily. Decisions to import may be affected by price and quality, but they are more likely to be determined by currency available and political factors. Commercial considerations are not overriding.

It goes without saying that competition has a very limited role in a centrally planned economic system. It is the plan that matters.

It is because of these problems that many of the Soviet Union's trading partners prefer to maintain bilateral relationships which are perceived as offering a better assurance of a satisfactory balance in the relationship. Some countries pursue this objective by means of quotas to regulate imports that to some extent are related to export levels.

In the 1930s, at the time of the U.S.-Soviet bilateral agreement, the United States sought an equitable balance by means of a Soviet purchase commitment. The Soviets did meet the commitment, but it was considered that the commitment was so low as to have no real bite. When the United States sought progressive increases in the import level, the Soviets refused, making the point that there was no similar purchase commitment by the United States.

During the negotiations for the International Trade Organization charter, the United States initially proposed a global purchase commitment, to be subject to periodic adjustment. The Soviet Union, however, failed to attend the preparatory meetings for the ITO at London and Geneva and the proposal was dropped. The idea has persisted, however. It resurfaced at the time of Polish and Rumanian accession. The idea has also been reconsidered from time to time in the U.S. Government when the prospect of a trade agreement with the USSR has arisen as, for example, in 1972. The notion of purchase commitments, however, has had only limited support in the United States and has been viewed as a second best, or worse, solution to the problem of achieving satisfactory balance.

Apart from the idea of purchase commitments, which are not provided for in the body of the GATT, there are certain other provisions in the GATT, applicable to state trading entities. These provisions were intended more for state trading enterprises in market economies than for centrally planned economies, but they have from time to time been considered in connection with the accession negotiations for nonmarket economies. These provisions require that contracting parties which maintain state trading enterprises undertake that such enterprises act in accordance with the principles of nondiscrimination in their imports or exports. What this provision is intended to require is that state enterprises apply commercial considerations to its purchases and sales.

Provision is also made for negotiations on a reciprocal and mutually advantageous basis to limit or reduce the obstacles to expanded trade that might result from the existence of state trading enterprises.

Finally, there is a requirement for disclosures of information about products imported or exported by state enterprises and about mark-ups on imported goods. The reference to markups is to the difference between the import price and the resale price within the country. The intention here was to use mark-ups as an analog for an import duty and to subject mark-ups to negotiation.

These provisions of the GATT affecting state trading enterprises, as I have said, were not intended to apply to centrally planned economies, but they are suggestive of approaches that might be employed with countries that have more decentralized socialist economies. Sometime around 1960, the then Executive Secretary of the GATT, Eric Wyndham-White, attempted to expand these provisions into standard terms of reference for countries with centrally planned economies. The Wyndham-White draft provided for—

—Recognition of the need for an equitable balance of rights and obligations.
—Hortatory language calling upon the acceding government to endeavor to establish conditions for the trade of contracting parties no less favorable than that secured for its trade through accession to the GATT.
—Adoption of regulations by the acceding government to make effective the state trading provisions of GATT Article XVII.
—Undertaking to avoid restrictions on trade with other contracting parties other than those provided for in the GATT.
—Facilitating access to markets by means of the admission and dissemination of advertising material, admission of commercial representatives and salesmen, and access by sales representatives to importing and consuming interests in the acceding country.
—Establishment and publication of import duties or maximum mark-ups over landed cost.
—Negotiations to reduce or to bind such duties or mark-ups in exchange for concessions by other contracting parties or alternative arrangements where reduction of duties or charges would be ineffective.
—Recognition that antidumping or countervailing duties may be assessed on the basis of third-country market data.

The Wyndham-White draft was circulated privately among a number of GATT members, but it gained little or no support. The principles contained in the draft,

however, have come to the fore each time non-market economies have sought accession and certain of the provisions have, in fact, been incorporated in the terms of accession of accepted new entrants.

The question arises why, in view of the accommodation of the other communist countries of Eastern Europe into the GATT system, are the United States and other contracting parties so reluctant to consider the Soviet interest in joining the GATT. To make the question even more pointed, why oppose the Soviet request, which is initially limited to observership? There are several reasons in my view.

The principal reason for putting the Soviet request on hold is deep-seated skepticism that the Soviet Union with its current centrally planned system is able to meet the fundamental obligations of the GATT. Although it is possible that reforms of the Soviet system currently underway or planned could overcome this skepticism, it is far from certain at this point in time that the reforms will go far enough in terms of the decentralization of decision making to provide assurance that the obligations of nondiscrimination and competition can be met.

There is a second set of reasons, which are political in character. There is concern that the Soviet presence in the GATT carries with it an inevitable politicization of the institution beyond that which resulted from the admission of the other Eastern European countries and the dozens of developing countries. This concern may or may not be legitimate, but it is based on the view that the Soviets, because of their size and larger strategic objectives, could be a disruptive influence in the GATT.

There is a secondary political consideration which is more of a U.S. preoccupation than a general GATT consideration at this point. There are some in the United States who would link Soviet accession to the GATT to human rights or worker rights issues, or to both. This linkage has been heard in some congressional quarters. It has also been said by a spokesman for the Dukakis campaign that the Governor would link Soviet admission to such institutions as the IMF, World Bank, or GATT to improved Soviet performances on human rights, regional conflicts, and "other areas." Pursuit of such linkage obviously will seriously complicate any consideration of the question of GATT accession by the USSR.

Finally, there is the question of timing. Even if there were no other reservations about Soviet accession, the timing of their request for admission comes at an inopportune time because of the preoccupation of the United States and other GATT members with the Uruguay Round trade negotiations. These negotiations are the most ambitious round of multilateral trade negotiations ever attempted. The negotiations involve not only the traditional subjects of tariff cutting and reduction of other trade barriers, but they are attempting to write new international rules for trade in services, intellectual property, and investment. The negotiations are attempting to introduce reforms of the GATT system and the dispute-settlement mechanism. The sheer scale of the negotiations is straining the resources of all governments. Given the problems posed by the Soviet request to participate in' the GATT, the United States and other governments are simply unprepared to divert their attentions away from the larger multilateral negotiations, which are scheduled to run at least until the end of 1990.

JULIUS L. KATZ

Julius L. Katz was chairman of the Government Research Corporation, Washington, D.C. from 1987 to 1989. From 1985 to 1987, he was Vice President of The Consultants International Group, Inc. He worked in the financial services industry from 1980 to 1985, where he was Chairman of Donaldson, Lufkin & Jenrette Futures, Inc. He served in the U.S. Department of State from 1950 until 1979, holding positions such as Deputy Assistant Secretary for International Resources and Food Policy, Senior Deputy Assistant Secretary of State, and Assistant Secretary of State for Economic and Business Affairs. While at the Department of State, Mr. Katz led numerous U.S. delegations in negotiations on trade, commodity and transport matters. At the nomination of the United States Trade Representative, he has served as Chairman of the negotiating group on the Functioning of the GATT System in the Uruguay Round of trade negotiations. Mr. Katz received his degree in international relations and economics from the George Washington University, where he did graduate studies in economics.

COMMUNICATIONS

U.S. OFFICE OF GOVERNMENT ETHICS,
Washington, DC, June 14, 1989.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: In accordance with the Ethics in Government act of 1978, I enclose a copy of the financial disclosure report filed by Michael J. Astrue, who has been nominated by President Bush to be the General Counsel of the Department of Health and Human Services.

We have reviewed the report and also have obtained advice from the Department of Health and Human Services concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. Based on the foregoing, I believe that Mr. Astrue is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

FRANK Q. NEBEKER, *Director.*

Enclosure.

U.S. OFFICE OF GOVERNMENT ETHICS,
Washington, DC, June 14, 1989.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Fred T. Goldberg Jr., who has been nominated by President Bush for the position of Commissioner of the Internal Revenue Service of the Department of the Treasury.

The report has been reviewed and advice obtained from the Treasury Department concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. Enclosed for your review is a copy of a letter from the Designated Agency Ethics Official of the Department, Jeanne S. Archibald, which outlines the steps that will be taken to ensure that no conflicts arise. If confirmed, Mr. Goldberg has agreed to withdraw from Skadden, Arps, Slate, Meagher and Flom, the law firm in which he is now a partner. Mr. Goldberg will also recuse himself from participating in any particular matter in which the firm is a party or in which it represents a taxpayer. This recusal will also extend to all of the clients of the firm that Mr. Goldberg has listed on his financial disclosure report. Mr. Goldberg will divest his stock interest in Source Technology. If he is unable to sell his stock in Source Technology, he will execute a recusal or, as appropriate, seek a waiver under 18 U.S.C. § 208(b)(1).

Based on the foregoing, we believe that Mr. Goldberg will be in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

FRANK Q. NEBEKER, *Director.*

Enclosures: As stated.

U.S. OFFICE OF GOVERNMENT ETHICS,
Washington, DC, June 14, 1989.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Julius L. Katz, who has been nominated by President Bush to be the Deputy United States Trade Representative.

We have reviewed the report and have also obtained advice from the Office of the United States Trade Representative (USTR) concerning any possible conflict in light of that Office's functions and the nominee's proposed duties. Attached to his financial disclosure report is a memorandum from Mr. Katz to the General Counsel of USTR dated June 12, 1989 in which Mr. Katz outlines the steps he intends to take to avoid even the appearance of a conflict. Based upon these commitments, I believe Mr. Katz is in compliance with applicable laws and regulations governing conflicts of interest.

FRANK Q. NEBEKER, *Director.*

Enclosure.

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